

DECISION ITEM



REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT MANAGEMENT	DEVELOPMENT MANAGEMENT COMMITTEE	29 JULY 2015	8

CONSIDERATION OF COUNCIL'S CASE TO DEFEND APPEAL AGAINST NON-DETERMINATION OF PLANNING APPLICATION 14/0410 AT LAND TO NORTH OF LYTHAM ROAD, WARTON

PUBLIC ITEM

This item is for consideration in the public part of the meeting.

SUMMARY

The council is faced with an appeal on grounds of its failure to determine planning application 14/0410 within the requisite timescale of 13 weeks from submission. The application is submitted in outline and relates to the erection of up to 375 dwellings and associated infrastructure on a site that would be accessed from the terminus roundabout to the Freckleton Bypass. This appeal is to be determined following a public inquiry which is programmed to commence on 19 January 2016. The appeal regulations require that the council submits a Statement of Case to outline the areas it wishes to dispute with the appellant at the Inquiry. This is normally framed by the reasons for refusal of an application, but in the case of a non-determination appeal such as this there has been no formal assessment of the planning merits of the proposal. The Statement of Case is to be submitted to the Planning Inspectorate by 14 August 2015 and will be prepared by council officers under the guidance of a barrister who has been instructed to present the council's case on the appeal.

The reason for the non-determination of the application is a consequence of the on-going lack of any decision on the appeal against application 13/0674 at Blackfield End Farm which was for the erection of up to 350 dwellings on that site and was heard at a public inquiry in October 2014 but is yet to be determined by the Secretary of State. The similar scale of the two appeal schemes and the implications that they have for a range of critical planning considerations such as highway capacity, appropriateness of scale of settlement expansion, locations of that expansion, etc. mean that the council (and highway authority) have not been able to reach a reasoned view on these issues until the outcome of that appeal is known.

The latest estimate for a decision at Blackfield End Farm is 30 July 2015 and the Planning Inspectorate have set the submission date for the Statement of Case on that appeal with that in mind. Officers are firmly of the opinion that the council's Case on this appeal can only be put forward if it is informed by the decision on the Blackfield End Farm appeal. This report is presented to seek the authority of Committee for officers to prepare that case at a time when the Blackfield End Farm decision is known, and that this be undertaken in consultation with the Committee Chairman, Vice-Chairman and the Warton and Westby ward members.

RECOMMENDATIONS

1. That the authority to prepare the council's Statement of Case on the appeal be delegated to the Head of Planning and Regeneration, in consultation with the Chairman and Vice-Chairman of Development Management Committee and the Warton and Westby ward.

CORPORATE PRIORITIES

To Promote the Enhancement of The Natural & Built Environment (Place)	√	To Encourage Cohesive Communities (People)	√
To Promote a Thriving Economy (Prosperity)	√	To Meet Expectations of our Customers (Performance)	√

SUMMARY OF PREVIOUS DECISIONS

There have been no previous decisions on this matter or site.

REPORT

1. In June 2014 the council received an outline planning application with reference 14/0410 for the erection of up to 375 dwellings on an area of land alongside, but outside of, the eastern edge of the settlement boundary to Warton. Access was the only matter applied for and was to be provided through the construction of a new leg from an existing roundabout that serves as the terminus of the Freckleton Bypass.
2. This application has been subject to consultation with neighbouring residents and the usual statutory and other consultees. This generated a number of objections including ones from Bryning with Warton Parish Council and from Lancashire County Council as Local Highway Authority.
3. These consultation responses highlight the critical link between the merits of this planning application and the determination of other applications in and around the settlement, with that at Blackfield End Farm at the forefront of this. That application has reference 13/0674 and was submitted in November 2013 and also subject to an appeal against its non-determination by the council. That appeal was heard at a public inquiry held in October 2014 where the capacity of the highway network, the appropriateness of the scale of settlement expansion, and visual impact of the development were all key issues under discussion. These issues are common to this appeal. The decision on the Blackfield End Farm appeal was expected in April 2015 but has been delayed a number of times since then and is now expected by 30 July 2015.
4. The similarity of these two schemes and the significance of their scale and so implications for the village's highway network and future development are such that officers were unwilling to present this application to Committee for a decision until the outcome of the Blackfield End Farm decision was known. The applicant did not accept this position and so submitted an appeal to the Planning Inspectorate against the council's failure to determine the application within the prescribed 13 week period. This is to be heard at a public inquiry starting on 19 January 2016 and scheduled to sit for 4 days. To defend this appeal the council needs to establish its case, but at this time remains unable to do so for the same reason that the application was not determined – the outstanding decision on the Blackfield End Farm appeal.
5. Discussions with the Planning Inspectorate have led to an extension of the normal submission timescale for this Statement of Case until Friday 14 August 2015. It would be usual for a report of

this nature to provide guidance to members on the matters that officers believe are key to the formation of this case. However, with the on-going unknown outcome on the Blackfield End Farm appeal this is difficult to do due to the fundamental importance of that decision. As such the recommendation here is that the authority to prepare the Statement of Case be delegated to officers with the Case prepared in consultation with the Chairman, Vice Chairman and local ward members.

6. A further issue to support that view is that the applicant has re-submitted the application. This has reference 15/0303 and is under consideration by the council and is identical in all respects to the appealed scheme other than it includes a second illustrative layout that illustrates how a lower density development could be achieved on the site. That application is also awaiting the outcome of the Blackfield End Farm appeal, but could well be presented to Committee for a decision well in advance of the public inquiry.
7. With appeals of this nature a 'Statement of Common Ground' is prepared to agree matters that are agreed between the parties (such as the description of the site, submitted plans, relevant policies, etc.) and those which are in dispute. This is also a matter that cannot reasonably progress until the Blackfield End Farm position is known but does not require submission to the Planning Inspectorate until December 2015 so is not currently pressing and will be informed by that decision.

IMPLICATIONS	
Finance	<p>There are costs involved in defending the appeal such as staff time of the planning and legal services, and the costs involved with instructing a barrister. This report does not alter those costs.</p> <p>There is also the possibility that the appellant may apply for its costs if the council is found to behave unreasonably in defending elements of the appeal. By ensuring that its case is submitted on the basis of the best knowledge of the background to the proposal, and that this is with the appropriate (delegated) authority of the Development Management Committee the risks of these costs awards are minimised.</p>
Legal	The Head of Governance will continue to present the case for the Council in accordance with its decision.
Community Safety	None.
Human Rights and Equalities	The rights of third parties to comment on the development will be maintained through the continuation of the appeal and the resubmitted application.
Sustainability and Environmental Impact	The Sustainability and environmental impacts of the proposed development will be addressed in the consideration of the appeal and resubmitted application.
Health & Safety and Risk Management	The submission of a Statement of Case that is not informed by the Blackfield End Farm decision, or does not have the weight of Member support places the council at a greater risk of costs being awarded.

LEAD AUTHOR	TEL	DATE	DOC ID
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LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
Planning and appeal file 14/0410	12 June 2014	www.fylde.gov.uk/planning
Planning file 15/0303	30 April 2015	www.fylde.gov.uk/planning